SUPREME COURT OF THE UNITED STATES.

No. 40.

THE BANK OF THE UNITED STATES, PLAINTIFF IN ERROR,

VERSUS

THE BANK OF WASHINGTON.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE COUNTY OF WASHINGTON D. C.

INDEX.

	Original.	Print.
Declaration	1	2
General issue	2	2
Statement of facts, subject to the opinion of the court, &c	3	3
Judgment	7	5
Clerk's certificate	7	5
Writ of error	9	6
Citation	10	6
Appeal bond	11	6

DISTRICT OF COLUMBIA, sct.

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the first Monday of May, being the third day of the same month, in the year of our Lord one thousand eight hundred and thirty, and of the independence of the United States of America the fifty-fourth, were present,

The Honorable WILLIAM CRANCH, *Chief Judge*,
BUCKNER THRUSTON, and
JAMES S. MORSELL, *Assistant Judges*,
TENCH RINGGOLD, Esquire, *Marshal*,
WILLIAM BRENT, *Clerk*.

In the record of proceedings in the said court, among others are the following, to wit:

The President and Directors of the Bank of Washington vs. the President, Directors and Company of the Bank of the United States.

Be it remembered, that heretofore, to wit, on the thirteenth day of January, in the year of our Lord one thousand eight hundred and thirty, the said President and Directors of the Bank of Washington, by Francis S. Key

Esquire their attorney, and the said President, Directors and Company of the Bank of the United States, by Benjamin L. Lear, Esquire their attorney, came into court, and with the consent of the said court docketted this cause; and the said President and Directors of the Bank of Washington, by their said attorney, declared against the said President, Directors and Company of the Bank of the United States, in the action aforesaid, in manner following, to wit:

DISTRICT OF COLUMBIA, WASHINGTON COUNTY, ss.

The President, Directors and Company of the Bank of the United States, late of Washington county, were attached to answer unto the President and Directors of the Bank of Washington, in a plea of trespass on the case, and so forth. Whereupon the said plaintiffs, by F. S. Key, their attorney, complain that whereas heretofore, to wit, on the first day of May, in the year of our Lord eighteen hundred and twenty two, to wit, at Washington county aforesaid, the said defendants were indebted unto the said plaintiffs in the sum of one thousand dollars, current money, for the like sum of money by the said plaintiffs to and for the use of the said defendants before that time paid, laid out and expended, at the special instance and request of the said defendants, and for other money by the said plaintiffs before that time lent and advanced to the said defendants, at their special instance and request, and for other money by the said defendants before that time had and received to the use of the said plaintiffs; and being so indebted, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, undertook and promised the said plaintiffs to pay them the said last mentioned sum of money, when afterwards they should be thereunto requested. Yet the said defendants the said sum of money herein mentioned, or any part thereof, (although often thereto requested, to wit, on the day and year last aforesaid, and often afterwards, to wit, at the county aforesaid,) have not paid to the said plaintiffs, but the same or any part thereof to pay to the said plaintiffs, have hitherto wholly refused, and still do refuse, to the damage of the said plaintiffs in the sum of two thousand dollars, current money; and therefore they bring suit, and so forth.

F. S. KEY, *Plaintiff's attorney.*

JOHN DOE, } *Pledges, &c.*
RICHARD ROE, }

And thereupon on motion of the said plaintiffs, by their attorney aforesaid, it is ruled by the court here that the said defendants answer to the declaration aforesaid of the said plaintiffs, in the plea aforesaid, or judgment by the court here will be entered against them in default thereof; and the said defendants, by their attorney aforesaid, defend the force and injury, when, and so forth, and say they did not assume upon themselves in manner and form as the aforesaid plaintiffs above against them have complained; and of this they put themselves upon the country, and the said plaintiffs in like manner, and so forth: therefore, let a jury thereon appear before the court here, on the first Monday of May next, by whom, &c., and who neither, &c., to recognize, &c., because as well, &c.; the same day is given to the said parties then and there, and so forth.

Thereupon the following statement of facts was received, by consent of the parties aforesaid, by their attorneys aforesaid, and by order of the court here, subject to the opinion of the court as to the law upon the facts.

342.

BANK OF WASHINGTON *vs.* BANK UNITED STATES.

In this case Triplett and Neale recovered a judgment at Alexandria court, at April term, 1824, against the Bank of Washington, which was afterwards taken to the Supreme Court by writ of error, and there reversed, as appears by the record of the same in the Supreme Court, and the proceedings in that court in the matter of the writ of error, Bank of Washington *vs.* Triplett and Neale, decided at the term of the Supreme Court. The Bank of Washington, on the 2d June, 1824, had petitioned for the allowance of a writ of error in the said case, and presented such petition to one of the Judges of the Supreme Court, by whom it was refused; and afterwards the said petition was presented to the Chief Justice of the United States, by whom the writ was allowed, on the fifteenth March eighteen hundred and twenty-five, and the same was accordingly issued, as by the record. On the 30th August, 1824, Triplett and Neale sued out execution on said judgment, and immediately sent the same enclosed in a letter to Richard Smith, cashier of the office of discount and deposite of the Bank of the United States at Washington, with an endorsement thereon in writing, to Richard Smith, cashier of the office of discount and deposite of the Bank of the United States at Washington, who writ an endorsement thereon, as appears from the said execution, and the endorsements thereon, in the words following:

DISTRICT OF COLUMBIA, TO WIT:

United States of America to the Marshal of the District of Columbia, greeting:

We command you, that of the goods and chattels, lands and tenements of the President and Directors of the Bank of Washington, late of the county of Washington, in your said District, you cause to be made the sum of eight hundred and seventy-one dollars and sixty-one cents, also nine dollars and fifty-seven cents, which Philip Triplett and Christopher Neale, lately trading under the firm of Triplett and Neale, late, in our circuit court of the District of Columbia for the county of Alexandria, recovered against them, for their damages, occasioned as well by reason of not performing a certain promise and assumption to the said Triplett and Neale, by the said President and Directors of said Bank lately made, as for their costs by them in this behalf expended, whereof they are convict, as appears to us of record; and that you have the same before the honorable the Judges of the said circuit court of the District of Columbia for the county of Alexandria, at the court-house in Alexandria, on the 4th Monday in October, to render to the said Triplett and Neale of their damages and costs aforesaid; and have then there this writ.

Witness the honorable William Cranch, Chief Judge of our said court, this 30th day of August, in the year of our Lord 1824.

EDM. I. LEE, *Clk.*

TRIPLETT AND NEALE *vs.* THE BANK OF WASHINGTON.

(1st.) (Endorsed as follows:)

Use and benefit of the office of discount and deposite U. States, Washington City.

CHR. NEALE.

Pay to Mr. Brooke Mackall.

RD. SMITH, *Cash'r.*

Received eight hundred and eighty-one dollars, 18 cents.

B. MACKALL.

That Brook Mackall, runner in the said office, and the person mentioned in the last of said endorsements, presented the said execution, &c., to the Bank of Washington, and there, on the 9th September, 1824, received the sum of $881 18 cents, and signed the receipt thereon; and at the time of signing the same, the said William A. Bradley, then cashier of the Bank of Washington, verbally gave notice to said Mackall that it was the intention of said Bank of Washington to appeal to the Supreme Court, and that the said office of discount and deposite would be expected, in case of a reversal of the judgment, to refund the amount; that said Mackall received the said sum, as the amount of principal and interest accrued on said judgment, as appears by his receipt on the said execution; which sum he delivered to said Smith, who entered it to the credit of C. Neale, one of the firm of Triplett and Neale, on the proper books of the said office: that before the delivery of the said execution to the said Smith as aforesaid, C. Neale, one of the said firm of Triplett and Neale, had promised said Smith to appropriate the money expected to be recovered from the Bank of Washington in said suit, to reduce certain accommodation discounts, which he, the said Neale, had running in said Bank, upon notes drawn by him, and endorsed by endorsers as sureties for the due payment thereof, which discounts were still running upon such notes at the time and times the said execution was so delivered, and when the money was paid as aforesaid; that the said Smith received the said execution, with said Neale's said endorsement thereon, as he understood and considered, for collection; and when collected, he deposited the same in Bank, to said Neale's credit generally; and would have sent the same to him at Alexandria, if he had requested him to do so, or would have paid his check for the amount; that immediately on the receipt of said money as aforesaid, said Smith writ a letter to the said Neale, in the words following, to wit:

OFFICE BANK UNITED STATES,
Washington, September 9th, 1824.

CHRISTOPHER NEALE, Esq.

DEAR SIR: I have received the sum of eight hundred and eighty-four dollars and 18 cents, from the Bank of Washington, in payment of your judgment against it, and have placed the same to your credit. Be good enough to give me specific directions of the way in which you wish it applied.

Yours, respectfully,
RD. SMITH, *Cash'r.*

To which letter the said Neale returned the following answer:

DEAR SIR: In reply to your esteemed favor, I have to request that you will apply the money received from the Bank of Washington to the reduction of the notes endorsed by John H Ladd & Co., and John A. Stewart, equally, after paying Thomas Swann and Walter Jones, Esqs., $100 between them, or $50 each, as their fees.

Yours, truly,
CHRIS. NEALE.

10*th September,* 1824.

343.

That said Smith applied the said money pursuant to the directions of the last mentioned letter. 'Tis submitted to the court, upon the foregoing case agreed, whether the plaintiffs are entitled to recover of defendants the money, with interest, so received and applied by said Smith as aforesaid: if the court decide in the affirmative, judgment to be entered for plaintiffs for the sum of $881 18 cents, with interest from the 9th day of September, 1824, till paid, and costs; otherwise, for the defendants, with costs &c. (Any objections to the competency of the evidence as here stated to be considered by the court.)

F. S. KEY, *for plffs.*
W. JONES, *for defts.*

N. B. The plaintiff also shews the record of the final trial at Alexandria court, of November term, 1829, and it is to be considered as herein inserted.

And because the court here will advise themselves before they give their judgment of and upon the premises, day therefore is given to the parties aforesaid until the first Monday of May next, to hear their judgment of and upon the premises, because the court here thereof are not advised, &c.

And now here, to wit, on the said first Monday of May, in the year one thousand eight hundred and thirty, come again into court here as well the said President and Directors of the Bank of Washington, by their said attorney, as the said President, Directors and Company of the Bank of the United States, by their said attorney; whereupon all and singular the premises being by the court here seen, heard, and fully understood, and mature deliberation thereupon had, for that it appears to the court here that the said President and Directors of the Bank of Washington are entitled to recover upon the facts as stated for the opinion thereupon; therefore it is considered by the court here that the said President and Directors of the Bank of Washington recover against the said President, Directors and Company of the Bank of the United States, as well the sum of eight hundred and eighty-one dollars and eighteen cents, as stated in said agreement, as the sum of ten dollars and twenty-nine cents, by the court here unto them, the said President and Directors of the Bank of Washington, on their assent, adjudged, for their costs and charges by them about this suit in this behalf laid out and expended; and the said President, Directors and Company of the Bank of the United States, in mercy, and so forth.

Test, WM. BRENT, *Clk.*

And whereas, afterwards, to wit, on the sixth day of October, in the year eighteen hundred and thirty, the said President, Directors and Company of the Bank of the United States, by their said attorney, produced and filed in court here the writ of the United States for the correcting of errors, of and upon the judgment aforesaid, directed to the Judges of the circuit court of the District of Columbia in the county of Washington; and in pursuance thereof, and according to the form and effect of the law in such case made and provided, a transcript of the record of proceedings of the judgment aforesaid, and all things thereto relating with the writ of error aforesaid, and a copy of the appeal bond hereto annexed, is hereby transmitted to the said Supreme Court accordingly.

In testimony whereof, I have hereto subscribed my name, and affixed the seal of the said circuit court, this 11th day of October, anno Domini 1830.

[SEAL.] WM. BRENT, *Clk.*

UNITED STATES OF AMERICA, sct.

The President of the United States to the Judges of the circuit court of the United States for the District of Columbia, sitting for the county of Washington, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said circuit court, before you or some of you, between the President and Directors of the Bank of Washington, plaintiffs, and the President, Directors and Company of the Bank of the United States defendants, a manifest error hath happened to the great damage of the said President, Directors and Company of the Bank of the United States, as by their complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in said Supreme Court, to be then and there held; and that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the Honorable John Marshall, Chief Justice of said Supreme Court.

Issued the fifth day of October, 1830.

W. BRENT, *Clk.*

DISTRICT OF COLUMBIA, sct.

The United States of America to the President and Directors of the Bank of Washington, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the United States circuit court of the District of Columbia for the county of Washington, wherein the President, Directors and Company of the Bank of the United States are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why judgment rendered against the said President, Directors and Company of the Bank of the United States, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the Honorable William Cranch, Chief Judge of the circuit court of the District of Columbia, this fifth day of October, 1830.

W. CRANCH.

Know all men by these presents, that we, Samuel H. Smith and Richard Smith, of Washington county, in the District of Columbia, are held and firmly bound unto the President and Directors of the Bank of Washington, in the full and just sum of two thousand three hundred dollars, current money, to be paid to the said President and Directors of the Bank of Washington, their certain attorney or assigns to which payment, well and truly to be

344.

made and done, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents: sealed with our seals, and dated this sixth day of October, in the year eighteen hundred and thirty.

Whereas, lately, at a circuit court of the District of Columbia, sitting for the county of Washington, in a suit depending in the said circuit court, wherein the said President and Directors of the Bank of Washington were plaintiffs, and the President, Directors and Company of the Bank of the United States were defendants, judgment was rendered against the said President, Directors and Company of the Bank of the United States; and they having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the said judgment in the aforesaid suit, and a citation directed to the said President and Directors of the Bank of Washington, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of January next—

Now the condition of the above obligation is such, that, if the said President, Directors and Company of the Bank of the United States shall prosecute their writ to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

SA. H. SMITH, [SEAL.]
RD. SMITH. [SEAL.]

Signed, sealed and delivered in the presence of,
JOHN S. NEVIUS,
WASHINGTON BECK.

Approved.

W. CRANCH.